



U.S. Department of Justice

Immigration and Naturalization Service

D3

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: SRC 00 016 51367 Office: Texas Service Center

Date: AUG 10 2000

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

**Public Copy**

IN BEHALF OF PETITIONER

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*John F. O'Reilly*  
Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner engages in dentistry and dental services. It desires to employ the beneficiary as a registered dental hygienist for a period of one year. The Department of Labor determined that a temporary certification by the Secretary of Labor could not be made. The director determined that a temporary need for the beneficiary's services had not been established.

No additional evidence was submitted on certification.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii), defines an H-2B temporary worker as:

an alien...having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), as codified in current regulations at 8 C.F.R. 214.2(h)(6)(ii), specified that the test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. See 55 Fed. Reg. 2616 (1990).

As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. 214.2(h)(6)(ii)(B).

The Petition for a Nonimmigrant Worker (Form I-129) indicates that the dates of intended employment for the beneficiary are from November 1, 1999 until October 31, 2000. The petition does not indicate whether the employment is seasonal, peakload, intermittent or a one-time occurrence. However, the petitioner's statement of rebuttal to the Department of Labor's decision dated October 6, 1999 states that the employer's need is a one-time occurrence.

The regulation at 8 C.F.R. 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future.

The Application for Alien Employment Certification (Form ETA 750) indicates that the beneficiary will be employed full-time, with 2-5 hours over-time, and paid a salary of \$986.40 per week, which calculates to \$51,292 annually. The nontechnical description of the job on Form ETA 750 reads:

The duties and responsibilities of the position include all duties and responsibilities of a registered dental hygienist as stated by Florida law. In addition, the position requires the development and implementation of a protocol for testing, analyzing, and establishing the use of a more effective cleansing agent to reduce the potential for cross-contamination through slow suction lines in our dental offices.

The petitioner's stated need for a dental hygienist is to conduct a research project related to hygiene and disinfection procedures in his dental office. However, the nontechnical description of the beneficiary's duties states that the position also includes all duties and responsibilities of a registered dental hygienist. Therefore, it is clear that the petitioner has a permanent need for someone in this position. The petitioner has not shown that its need for a registered dental hygienist is temporary in nature.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

**ORDER:** The decision of the director is affirmed. The petition is denied.